

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ALLAN DEAN OWENS,

Plaintiff,

v.

P. CHAMBERLIAN, et al.

Defendants.

ORDER

Case No. 20-cv-33-jdp

On April 22, 2020, I entered an order granting plaintiff a third extension of time until May 7, 2020, to submit the \$45.39 initial partial payment of the \$350.00 fee for filing this case. Dkt. 17. Now plaintiff has filed a motion to lower the \$45.39 initial partial payment. Dkt. 18.

The statute governing proceedings *in forma pauperis*, 28 U.S.C. § 1915, dictates the manner in which prisoners must pay the fees for filing federal lawsuits and appeals, and I have no discretion to modify this method. In calculating the amount of plaintiff's initial partial payment in this case, I used the trust fund account statement he submitted in support of his motion for leave to proceed without prepaying the fee. According to the formula set forth in 28 U.S.C. § 1915(b)(1), a prisoner litigant must prepay 20% of the greater of the average monthly balance or the average monthly deposits made to his prison account in the six-month period immediately preceding the filing of the complaint. The greater of the two amounts is 20% of the average monthly balance, or \$45.39; this is the amount plaintiff is assessed as an initial partial payment of the \$350.00 fee for filing this case. Because this court is bound by the provisions of the Prison Litigation Reform Act and because it is clear plaintiff's initial partial payment was calculated correctly pursuant to these provisions, his motion to lower the amount of the \$45.39 initial partial filing fee in this case must be denied.

However, I will give plaintiff an extension of time until May 29, 2020, to submit the \$45.39 initial partial payment. If plaintiff is still unable to submit the \$45.39 initial partial payment by May 29, plaintiff should submit an updated trust fund account statement to the court, so that I may re-evaluate plaintiff's financial circumstances.

ORDER

IT IS ORDERED that:

1. Plaintiff's motion for the court to lower the initial partial payment in this case, dkt. 18, is DENIED.

2. Plaintiff may have an enlargement of time until May 29, 2020, in which to submit a check or money order payable to the clerk of court in the amount of \$45.39, or advise the court in writing why plaintiff is not able to submit the assessed amount on or before May 29, 2020. If plaintiff does not have enough money to pay the initial partial payment from his regular account, plaintiff should arrange with prison authorities to pay the initial partial from plaintiff's release account.

3. If, by May 29, 2020, plaintiff fails to make the initial partial payment, or show cause for failure to do so, plaintiff will be held to have withdrawn this action voluntarily and the case will be closed without prejudice to plaintiff filing this case at a later date.

Entered this 12th day of May, 2020.

BY THE COURT:

/s/
PETER OPPENEER
Magistrate Judge